

memorandum

DATE: August 2, 2000

REPLY TO:
ATTN OF: Office of Environmental Policy and Guidance (EH-413); Fortune: 6-7302

SUBJECT: *Minutes of HWIR Focus Group Conference Call (07/19/2000); and
Extension of Comment Period on HWIR99 Exemption Proposal*

TO: *DOE Designated Regulatory Contacts*

On July 19, 2000, EM-13 convened the Hazardous Waste Identification Rule (HWIR) Focus Group on a conference call. The purpose of the conference call was to obtain input from the Focus Group concerning certain specific comments being developed by EH-413 in response to the HWIR99 exemption framework (64 FR 63464; November 19, 1999; Sections V - XXVI). Notes from the conference call are attached for your information.

As the attached notes indicate, during the conference call, EH-413 advised the HWIR Focus Group that EPA issued an HWIR Notice of Data Availability (NODA) on July 18, 2000 (65 FR 44491). The NODA makes available and requests comments on exemption levels for 36 chemicals based on results from an updated version (Version 0.98r) of the Multimedia, Multipathway and Multireceptor Risk Assessment (3MRA) Model. The deadline for comments is set for October, 2000.

In addition, the NODA again extends the deadline for comments on the HWIR99 exemption framework. Previously, EPA changed the deadline from May 17, 2000 to August 15, 2000 to allow additional time for review (65 FR 20934; April 19, 2000). The NODA gives commentors until October, 2000, which coincides with the deadline for comments on the 36 exemption levels presented in the NODA.

Please note that the NODA *does not* re-open the comment period on the revisions to the mixture and derived-from rules that were also contained in the HWIR99 proposal (64 FR 63464; November 19, 1999; Sections I-IV and XXI - XXVI). EH submitted a DOE consolidated response package concerning that portion of the HWIR99 proposal on February 17, 2000.
[\[http://tis.eh.doe.gov/oepa/comments/rcra/hwircomments.pdf\]](http://tis.eh.doe.gov/oepa/comments/rcra/hwircomments.pdf)

Action Items

In view of the above, Bill Fortune announced during the HWIR Focus Group conference call that the Office of Environmental Policy and Guidance (EH-41) would welcome additional comments on the HWIR99 exemption framework, as well as comments on the NODA, from Program and Field Organizations **until close of business September 12, 2000.**

- Input may be submitted (with signed, hard copy to follow) to:

FAX (202) 586-3915
E-Mail william.fortune@eh.doe.gov

Contact

If you have questions regarding the NODA or the attached notes from the HWIR Focus Group conference call, please contact Bill Fortune at (202) 586-7302.

cc: EM-13

Attachment

HWIR Focus Group Conference Call
July 19, 2000

- B. Fortune (EH-413) provided a brief overview and background on the development of DOE's HWIR99 comment package. EH received comments from 8 DOE field offices and sites, EH and EM. These comments have been used to develop the current draft comment package. In general, the comments support EPA's proposed rule for the HWIR99 and the self-implementing nature of the rule (which is consistent with existing RCRA regulations for generators), but requests some areas of clarification. In particular, DOE is requesting EPA's confirmation that mixed wastes, which meet the HWIR99 exemption levels at the waste's point of generation, be allowed to be disposed of in an appropriate AEA facility. In addition, the draft response requests EPA to clarify that mixed wastes that have been treated to meet the exemption levels, will also be allowed to be managed as radioactive waste.
- B. Fortune pointed out that the EPA published a Notice of Data Availability and Request for Comment in the July 18, 2000 *Federal Register* (i.e., 65 FR 44491). This notice provides results for 36 chemicals using an updated version of the Multimedia, Multipathway and Multireceptor Risk Assessment Model. In addition, EPA has extended the comment period for the November 19, 1999 HWIR exemption discussion until October 16, 2000. [Note: The comment period on the revisions to the mixture and derived-from rules that were also proposed in the November 19, 1999 notice has not been re-opened.]
- B. Fortune noted that as a result of the extension of the comment period, EH-413 will be accepting comments on the NODA and any additional input on the HWIR99 proposal from DOE program offices and field organizations up until the early part of September [specifically, until September 12, 2000]. In particular, there are several areas for which B. Fortune requested help from the HWIR Focus Group in developing responses. These areas were identified in Attachment 2 of the package sent to the HWIR Focus Group for today's call and are briefly summarized with the sites' input as follows:

- Comment 1 -- For DOE's response to the Generic HWIR Exemption Option, should DOE expand the request for clarification to include HLW and TRU waste? In general, it appears from the site representatives' input that DOE does have HLW and TRU waste, and possibly greater than Class C, to which the HWIR exemption could apply. It was suggested that DOE request clarification by referring generally to mixed wastes.

- Comment 2 -- For DOE's response to alternative standards for demonstrating compliance with the exemption levels, is it in DOE's best interest to support a statistical approach? In general, it appears from the site representatives' input that DOE should support the testing with the greatest latitude (i.e., statistical approach, along the lines of EPA's proposed alternatives 1 or 3).

- Comment 3 -- For DOE's response to retesting, should DOE request substituting "the analytical detection limit" for "an order of magnitude below the applicable exemption?" Hanford representative noted that DOE may get questioned on this because when testing HLW, DOE artificially increases the detection limit to address ALARA concerns (i.e., the sample size is reduced and the sample is diluted more than typically done). In general, it appears from the site representatives' input that DOE should request that the Limit of Quantification (LOQ) be used rather than the detection limit. EH stated that they would relook at previous LDR comment packages that previously addressed the use of LOQ to develop this comment.

- Comment 4 -- Should DOE develop a comment on the possibility of changing the alternative soil LDR treatment standards? The HWIR Focus Group did not have any input to this comment.
- Comment 5 -- Should DOE develop a comment on the possibility that contaminated media would have to be tested for the entire list of exemption chemicals? In general, the site representatives agreed that DOE should provide a comment requesting EPA to allow for the generator to limit the list of exemption chemicals for debris based on process knowledge. DOE has been able to identify chemicals of concern for environmental remediation based on knowledge of the site.
- B. Fortune requested that the HWIR Focus Group representatives provide any additional comments to him. Hanford representative noted that they had sent some comments to B. Fortune on the “point of generation” and how that can be determined for legacy wastes.
- B. Fortune noted that EPA is treating this proposal as an Advance Notice of Proposed Rule Making and plans to publish a proposed rule based on the comments they receive on the November 19, 1999 proposal and the recently published notice of data availability. EPA is on track with the mixture and derived-from portion of the proposal (i.e., they plan to issue a final rule in April 2001).
- B. Fortune stated that he had received some information from EPA on the status of the Mixed Waste Storage, Treatment, and Disposal Rule. In particular, the EPA Working Group does not appear to be supporting the alternative approach which would provide for site-specific exemption levels (i.e., risk-based approach). Under this approach DOE would work with the State regulator to develop site-specific exemption levels for wastes that could be disposed at a DOE facility.
- B. Fortune noted that EPA published on June 19, 2000 (65 FR 37932) an Advance Notice of Proposed Rulemaking, which addresses revisions to the LDR program. This could have significant impacts on certain DOE operations. In particular, it was noted that EPA is requesting information on developing specified technology LDR treatment standards for mixed wastes. DOE has previously sent information to EPA on the problems with sampling and analysis of mixed wastes, stressing the difficulties experienced with certain mixed wastes that must meet concentration based standards. EH had sent out a memorandum requesting comments from the DOE programs and sites. Comments must be sent to B. Fortune by August 23, 2000. B. Fortune requested that the HWIR Focus Group review this notice and provide comments as necessary.

Action Items:

- Provide any additional comments on the HWIR99 package to B. Fortune by early September 2000. (Site representatives)
- Provide any comments on the LDR ANPR to B. Fortune by August 23, 2000. (Site representatives)

Participants: **HQ:** EM-13-J. Antizzo; EH-413- B. Fortune; RW-L. Bissel; ANL-N. Ranek; SAIC-M. Spivey; **FIELD:** LANL-A. Barr; OAK-W. Colle; OR-R. Martin; RF-R. DiSalvo; RL-M.B. Burandt; PNNL-M. Lurchin; SNL- S. Carson; WWVDP-B. Dubiel; C. Biederman.